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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,027	06/29/2001	Olaf Isele	8610	7458

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EXAMINER	
CHANNAVAJJALA, LAKSHMI SARADA	

ART UNIT	PAPER NUMBER
1615	12

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/895,027	Applicant(s) ISELE ET AL.	
	Examiner Lakshmi S Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Receipt of request for continued examination and response dated 9-9-03 is acknowledged.

Claims 1-20 are presented for examination.

Claim Rejections - 35 USC § 103

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/64502 (hereafter WO).

Instant claims are directed to an article such as a diaper or a sponge, comprising a porous substrate having a contacting surface and an opposing surface, wherein the contacting surface is disposed with a s beneficial agent and a means for minimizing migration of the beneficial agent into the porous substrate, whereby the ratio of the amount of beneficial component present in the top third portion of the substrate is about 2.2 times the amount of the beneficial agent present in the bottom 2/3 portion of the substrate. Dependents claims further define beneficial agents, disposing the beneficial agent in layers and method of top-biasing a composition on a porous substrate. Independent claim 9 recites a first layer of 5% to 95% of beneficial component on the contacting surface followed by a depositing a second layer. Independent claim 16 recites a method of top-biasing article by applying a first layer of relatively hydrophilic component followed by applying a relatively hydrophobic component allowing the first and second layers to cool without formation of an emulsion.

WO teaches an absorbent article having a liquid impermeable outer surface, a middle absorbent portion and a top liquid permeable bodyside liner facing the wearer (see figure 2 of WO). WO teaches that the bodyside liner may be made of woven or nonwoven materials, less hydrophilic to be dry, porous (page 12, lines 15-32). The bodyside liner includes a lotion

formulation on the outer bodyfacing surface and is comprises wax, emollient and a viscosity enhancer, that acts as a lubricant to reduce the abrasion of skin caused by liner and also transfers to the skin to provide improved skin health (abstract, page 13, lines 15-22) including fatty alcohols, lanolin or lanolin derivatives, petroleum based oils (page 13, lines 22-35), waxes for immobilizing the emollient and reduce its tendency to migrate (page 14), viscosity enhancers such as talc, silica, cellulose and modified cellulose derivatives and other skin treating compounds such as glycerin, zinc oxide, etc (page 15 and 16).

WO does not teach the claimed thickness of the beneficial components on the porous substrate i.e., 2.2 times more in the top third portion of the porous substrate than the bottom 2/3 portions. Further, WO teaches the lotion can be applied to the bodyside liner at 0.05-100 mg/sq. cm. Accordingly, it would have been within the scope of a skilled artisan to optimize the amounts of lotion applied on the absorbent applied on the article. The expected result would be a minimum migration of the solidified components applied to the bodyside line. A careful review of the instant specification also reveals that the same end result i.e., minimizing the migration of lotion is achieved by the applicants by incorporating viscosity enhancing agents (page 18) and hydrophobic agents such as wax, both of which are taught by WO. Further, WO states that a z-direction migration loss test shows that the migration of the lotion on the absorbent article is very low. With respect to the claims 9 and 16, WO does not explicitly teach layers of beneficial component or disposing a first hydrophilic layer followed by a hydrophobic layer. However, WO suggests limiting the lotion to restricted areas of the article such that migration to the interior or lateral migration of the absorbent body is not observed. Further, WO teaches applying the lotions to discreet areas as stripes as full length or a portion of the article and further in an add-on level,

including the claimed steps of applying the component and solidifying (page 19). WO also teaches deposition of wax, emollients and other viscosity enhancers such as celluloses, silica, petrolatum, aloe etc., all of which read on instant hydrophilic components, along with emollients and wax (hydrophobic) in the lotion formulation. WO suggests that the lotion formulation be applied to the entire body face or may be applied selectively to particular sections, so as to provide greater lubricity to such sections and can be applied in stripes (page 18, lines 26-33) and suggests adding the lotion to about 25% of the body facing surface of the bodyside liner. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to apply the lotion composition in a desired thickness or amounts with an expectation to exhibit minimum migration because WO suggests that the wax and viscosity enhancer containing lotion solidifies at the site of deposition due to the high melting agents and therefore do not migrate from their position (paragraph bridging pages 2-3). Further, adding the beneficial agents, hydrophobic or hydrophilic or both, in discreet patterns such as layers or stripes etc., and allowing the component to result in a proper composition, such emulsion formation or suspension or solution without affecting the optimum migration of the beneficial components would have been within the scope of a skilled artisan.

Response to Arguments

Applicant's arguments filed 9-9-03 have been fully considered but they are not persuasive.

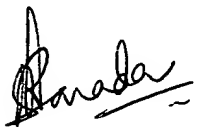
Applicants argue that office showing that claimed requirements are obvious for one of an ordinary skill in the art from the teachings of WO is insufficient because the minimizing

migration taught by WO does not teach how to solve the problems known in the art and that there is no evidence that even if applied in a particular thickness, the prior art viscosity enhancers would render the claimed result. In this regard, applicants argue that WO requires that the minimum migration is in the range of 55%, while instant top-biasing result in claim 1 results in 45% or less. Thus, it is evident from applicants' own admission that the only difference between instant and WO teachings is in the degree of minimum migration. In response to this argument, applicants attention is directed to page 17 of WO, where it is clearly suggested that preferably the migration loss is no more than 55%, preferably no greater than 40%, more desirably no more than 35%. Thus, it is clear that both instant invention and WO desire the same result. Applicants argument that office used applicants own disclosure of viscosity enhancers in rejecting claims is not persuasive because, as clearly explained in the previous action and also above, WO teaches the importance of viscosity enhancers and their application on the absorbent article, so as to achieve minimum migration. Applicants' argument that the disclosed viscosity enhancer of instant application is optional and not essential is moot because, instant claims do not recite any specific viscosity enhancer and instead generally states "a means", that encompasses any type of component that achieves the function, including applicants' and thus does not exclude the one described by applicants. Applicants argue that examiner has not made prima facie case obviousness for the subject claims 9 and 16 9independent claims). Examiner has presented a further explanation of obviousness of the instant claims in this action. For the reasons above, the instant rejection is deemed to be proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 703-308-2438. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



Lakshmi S Channavajjala
Examiner
Art Unit 1615

November 28, 2003